IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.341 OF 2004
a/w Civil Application No.270 of 2003

Pandurang Vithoba Thakur, .. Appellant.
Vs
Shashikant Bhausaheb Thakur
and anr. .. Respondents.

Mr Uday Warunjikar, for the appellant.

CORAM : D.B.BHOSALE,J.
DATE : 14.11.2006

PC:

1. Heard the learned counsel for the appellant.

2. This second appeal is directed against the concurrent findings recorded by the courts below in a suit instituted by the respondents-plaintiffs for injunction simplicitor. Admittedly, the consolidation scheme under the provisions of The Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, (for short, "The Act") was made applicable to the village and it was implemented. The appellant claims that despite the scheme was made applicable to the village, there was an agreement between him and father of the respondents-plaintiffs and in view of the agreement they had not acted upon the scheme and that the appellant-defendant continued in possession of the suit land allotted to the father of respondent-plaintiff

no.2. This contention was negatived by both the courts below. Mr Warunjikar, learned counsel for the appellant, vehemently submitted that in view of the provisions of Section 36A and 36B of the Act the courts below ought to have framed an issue in respect of jurisdiction of the court and referred the same to the concerned authority under the said Act. In other words, he submitted that a duty is cast upon the court under the Act to frame the issue and refer it to the concerned authority for its adjudication. And since both the courts below failed to do so, the impugned judgments are without jurisdiction. I am unable to accept the submission advanced by Mr Warunjikar, learned counsel for the appellant. It was a suit for injunction simplicitor. It is clear that the consolidation scheme was framed and implemented in 1968-69 itself. The plaintiffs claim that they were put in possession of the land allotted to them under the scheme. In view thereof, I am of the considered opinion that to examine the issue whether the scheme was acted upon or not, it was not necessary to refer the same to the consolidation authority. The appellant has not disputed framing of the scheme nor has he raised any issue in respect of the scheme. The agreement between the parties, not to act upon the scheme, even if exists, such agreement would be void and the appellant can not enforce any right on the

basis thereof. In my opinion, the civil court has not exceeded its jurisdiction in entertaining and decreeing

the suit filed by the respondents-plaintiffs for injunction simplicitor. I am satisfied that the case involves no substantial question of law. Keeping that in view and considering the concurrent findings of fact and as I find that there is sufficient material on record to sustain those findings and considering the extremely limited jurisdiction of this Court under section 100 of C.P.C to disturb the findings of fact, this second appeal fails and is dismissed as such. As the consequence thereof, the Civil application also stands dismissed.

(D.B.BHOSALE,J.)